

APPLICANT:
Cherrill Garrison

REQUEST: A variance pursuant to
to permit an above-ground swimming pool
within the required front yard setback

HEARING DATE: April 6, 2005

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5476

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Cherrill Garrison

LOCATION: 3278 Ady Road – Southwest corner of Ady Road and Mine Branch Road
Lands of Robert D. Lynch
Tax Map: 26 / Grid: 2C / Parcel: 128 / Lot: 1
Fifth Election District (5th)

ZONING: AG / Agricultural

REQUEST: A variance pursuant to Section 267-26C(4) of the Harford County Code to
permit an above-ground pool within the required front yard setback in an
AG District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant is requesting a variance to allow a 24 foot in diameter, above-ground pool to remain within the subject property's 50 foot front yard setback. In support of her application the Applicant argues her property is unique. The size of the parcel is approximately two acres and, according to the Applicant and the evidence of record, roughly "L" shaped. The property lies at the intersection of MD Route 543 (Ady Road) and Mine Branch Road. Accordingly, the subject property is impacted by two front yard setback requirements.

The Applicant stated that a 15 foot pool had been on her property, in the same location as that proposed for the 24 foot pool, for the previous fifteen years. The Applicant did obtain a permit for the new 24 foot pool, which she intended as a replacement for the old pool. However, when she went to install the new pool she realized that its proposed location, which was outside of the 50 foot front yard setback along Mine Branch Road, was contained a portion of her septic system. Once the Applicant realized the problems of that location, she constructed the 24 foot pool in the same location as had been located the 15 foot pool. That location results in a front yard setback impact.

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The Applicant feels that the property is unique, as not only is it impacted by two front yard setbacks, but the septic system runs through that portion of the property which is outside the 50 foot front yard setback. The rear part of her property is almost totally wooded, and also is subject to a Natural Resource District buffer. Because of these features it is impossible for the Applicant to erect the proposed pool in any of those locations.

Mine Branch Road is a dead-end road, on which there are perhaps six or seven residences. The Applicant had obtained the signatures of almost all the residents along Mine Branch Road in support of her request. She has not heard from any individual who objects to the request. The location of the pool, as proposed, is not easily visible from either Mine Branch Road or MD Route 543.

For the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune repeated the position of the Staff Report that the subject property is unique. The property is impacted by two front yard setbacks. The improvements on the property, the house and garage, are themselves non-conforming as they are built within the front yard setback prior to zoning.

The rear portion of the property is not usable for a pool due to the existence of woodland, septic reserve field, and a Natural Resource District buffer. The originally proposed area for the pool is unsuitable as it contains part of the septic system for the property. Mr. McClune feels that the pool is barely visible from either Mine Branch Road or MD Route 543 because it is located behind existing buildings.

Mr. McClune feels there will be no adverse impact on any adjoining property or resident.

There was no testimony or evidence presented in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:

(1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.

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(2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”

Section 267-26C(4) of the Harford County Code states:

“(4) No accessory use or structures shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in Section 27-23C, Exception and modifications to minimum yard requirements.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The subject property is a two acre “L” shaped parcel, with one leg of the “L” fronting on both Mine Branch Road and MD Route 543. This short leg of the “L” is subject to 50 foot front yard setbacks along both Mine Branch Road and along Route 543. If it were not for the fact that the house and other permanent improvements are non-conforming, this portion of the property would be virtually unusable as the front yard setbacks impact it to such a degree that there is little buildable space remaining. The majority of the property which is not encumbered by the front yard setbacks is in the remaining part of the “L”, which is itself severely impacted by a septic reserve area, woodland, a Natural Resources buffer, and the remaining part of the existing septic system. Quite obviously the subject property is highly unusual in both its configuration, road frontage, and natural features.

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The Applicant desires to erect and maintain on her property a 24 foot above-ground pool. The Applicant applied for and received a permit to construct the pool close to her house, but outside of the 50 foot front yard setback. At that time the Applicant then discovered the existing septic system and other lot limitations prevented her from doing so. She instead erected it where a 15 foot pool had been located for many years. If this variance were not granted the Applicant would not be able to maintain a pool similar to one which she has maintained on the property for many years, apparently without objection. This hardship is caused by the unique characteristic of the subject property, and can be alleviated by this variance, which is the minimum relief necessary.

It is found that the granting of the variance would have no adverse impact upon any neighbor or neighboring property. Indeed, the Applicant has secured the affirmative consent of most of her neighbors to the proposed use.

CONCLUSION:

It is accordingly recommended that the requested variance be granted.

Date: May 18, 2005

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on JUNE 16, 2005.